IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3901 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMAYLAL RAMKIRPAL - Petitioner(s)

Versus

KANAIYA PRINTERS (P) LTD. - Respondent(s)

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Appearance :

MR KR KOSHTI for Petitioner(s) : 1,
MR PREMAL JOSHI, for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/03/2006

ORAL JUDGMENT

1.Rule. Learned advocate Shri Premal Joshi appearing for the respondent on caveat waives service of notice of rule. At the joint request of the learned advocates appearing for the parties, the present petition is

taken up for final disposal today.

2. In the present petition, the petitioner-employee has challenged the order dated 30th November, 2005 passed by the Labour Court, Surat.

3. Short facts leading to the present petition are that the petitioner was employed by the respondent. He was terminated from service on 26th May 1999. He challenged his termination before the Labour Court, Surat. His Application being T.Application No.874/99 came to be allowed without participation from the respondent. This order was passed on 30th April 2001. Upon an application by the respondent, proceeding was restored and once again by an order dated 1.2.2002, the application came to be allowed. The Labour Court directed reinstatement of the petitioner with backwages. The respondent did not challenge this order for quite some time. The petitioner therefore filed recovery application being Application No.4/02. This application came to be allowed by an order dated 25.11.2003 directing the respondent to pay a sum of Rs.97,210/- plus cost of Rs.1500/-. Recovery certificate pursuant to the said order also came to be issued on 12.3.2004. Since the authorities were not implementing the recovery certificate, the petitioner

filed Special Civil Application No.10876 of 2004 which came to be disposed of by the order dated 3rd September 2004 expecting respondent No.1 therein to take effective steps to ensure recovery of the amount due. The respondent-employer filed Misc. Civil Application No.12/2005 which came to be rejected on 13.1.2005. The respondent then preferred an application before the Labour Court seeking recalling of the order dated 25.11.2003 passed in Recovery Application No.4/02. In the said application, the Labour Court passed the impugned order on 30th November 2005 and recalled the order on the condition that the respondent pays cost of Rs.5,000/- to the petitioner.

4. Learned advocates appearing for the parties submit that the respondent has now challenged the order passed by the Labour Court in T.Application No.874/99 before the Industrial Tribunal and such application is pending.

5. It can thus be seen that the petitioner has been made to go through several stages of protracted litigations and so far he has not received any benefits pursuant to the orders passed by the courts below. As directed by the Labour Court, the respondent has deposited an sum of Rs.98,710/- before the Labour Court. The respondent has also deposited cost of Rs.5,000/- as ordered in the

impugned order dated 30th November, 2005.

6. The order dated 25.11.2003 passed by the Labour Court is only a consequential order, the basis of which is the earlier order dated 1st February 2002. If the order dated 1st February 2002 is not altered, there is hardly any scope to modify the recovery order dated 25.11.2003. On the other hand, if ultimately, the Industrial Court or any higher Court were to allow the appeal/application of the respondent against the order dated 1.2.2002, the order passed by the Labour Court in Recovery Application would no longer be valid.

7. Considering the above aspect of the matter and also considering the substantial delay caused by the respondent by not participating in the proceedings, even if it was on account of negligence on the part of the lawyers, it would be necessary to provide for a formula to balance the equities and to protect the interest of both the sides. It is therefore provided that the respondent shall reinstate the petitioner forthwith. For the above purpose, if the petitioner reports for duty by 13.3.2006, the respondent shall reengage him. Further, in addition to the amount of Rs.5,000/- deposited by the respondent towards costs as provided by the Labour Court in its order dated 30th

November 2005, the petitioner will also be permitted to withdraw 25 per cent of the amount of Rs.98,710/- deposited by the respondent towards recovery of the backwages. Release of Rs.5,000/- towards cost is unconditional. However, reengagement of the petitioner and release of 25 per cent of the amount deposited towards backwages is subject to the outcome of the appeal filed by the respondent before the Industrial Tribunal against the order dated 1.2.2002 passed by the Labour Court in T.Application No.874/99. If ultimately the respondent fails in the appeal filed before the Industrial Court subject to further proceedings that may be carried, remaining amount deposited by the respondent before the Labour Court pursuant to the recovery order will be paid over to the petitioner. On the other hand, if the respondent succeeds in the appeal or further proceedings, the order passed by the Labour Court in recovery application on 25th November 2003 will abide by such order and the petitioner will not claim any equity for having been reengaged under this order or having received the above amount from the respondent. In view of this arrangement it will not be necessary to hear the recovery application of the petitioner afresh

pursuant to impugned order dated 30.11.2005.

8. All contentions of both sides are kept open before Industrial Court and I have expressed no opinion on merits of such appeal filed by the respondent. It will be open for both the sides to apply to the Labour Court for investing the remaining amount in fixed deposit so as to earn interest.

9. In the result, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)